

STATE OF RHODE ISLAND
COMMISSION FOR HUMAN RIGHTS

RICHR NO. 07 EPD 058

EEOC No. 16J-2006-01433

In the matter of

Thai-Ping Mays
Complainant

v.

DECISION ON PETITION
FOR ATTORNEY'S FEES

JDTK Food Services, LLC and Dennis Rochon
Respondents

INTRODUCTION

On September 6, 2006, Thai-Ping Mays (hereafter referred to as the complainant) filed a charge with the Rhode Island Commission for Human Rights (hereafter referred to as the Commission) against JDTK Food Services, LLC. On April 20, 2007, the complainant filed an amended charge adding Dennis Rochon as a respondent. (JDTK Food Services, LLC and Dennis Rochon are hereafter collectively referred to as the respondents.) After investigation and a finding of probable cause, a complaint and notice of hearing issued. The complaint alleged that the respondents discriminated against the complainant with respect to terms and conditions of employment, and termination of employment because of her disability, in violation of R.I.G.L. Sections 28-5-7 and 42-87-2. A hearing on the complaint was held before Commissioner Rochelle Bates Lee on June 24, 2009. The complainant was represented by counsel. Dennis Rochon was present and represented himself.

On February 24, 2010, the Commission issued a Decision and Order which found that the respondents discriminated against the complainant on the basis of her disability with respect to terms and conditions of employment and termination of employment because of her disability in violation of R.I.G.L. Sections 28-5-7 and 42-87-2. The Decision and Order provided that:

The attorney for the complainant may file a Motion and Memorandum for Award of Attorney's Fees no later than 45 days from the date of this Order. The respondents may file a Memorandum in Opposition no later than 45 days after receipt of the complainant's Motion. The parties' attention is directed to Banyaniye v. Mi Sueno, Inc. and Jesus M. Titin, Commission File No. 07 PPD 310 (Decision on Motion for Attorney's Fees 2009) for factors to be generally considered in an award of attorney's fees under the Fair Employment Practices Act. If either party would like a hearing on the issues involved in the determination of an appropriate award of attorney's fees, the party should request it in the memorandum.

On April 7, 2010, the complainant's attorney filed Attorney Robert E. Savage's Petition for Attorney's Fees for Representing Complainant Thai-Ping Mays Before the RICHR (hereafter referred to as the Motion). Mr. Savage also filed an Affidavit in Support. The respondents did not file a memorandum in opposition. None of the parties requested a hearing on the Motion.

DISCUSSION

I. Introduction

R.I.G.L. Section 28-5-24(a)(3) of the Fair Employment Practices Act provides in relevant part that: "[i]n appropriate circumstances attorney's fees, including expert fees and other litigation expenses, may be granted to the attorney for the plaintiff if he or she prevails."

In establishing its standards for evaluating evidence in discrimination cases, the Commission utilizes the decisions of the Rhode Island Supreme Court, the Commission's prior decisions and decisions of the federal courts interpreting federal civil rights laws. The Rhode Island Supreme Court has utilized federal cases interpreting federal civil rights law as a guideline for interpreting the state anti-discrimination laws. "In construing these provisions, we have previously stated that this Court will look for guidance to decisions of the federal courts construing Title VII of the Civil Rights Act of 1964. *See Newport Shipyard, Inc.*, 484 A.2d at 897-98." [Center for Behavioral Health, Rhode Island, Inc. v. Barros](#), 710 A.2d 680, 685 (R.I. 1998).

The complainant seeks attorneys' fees of \$2,660.00 for work up to April 6, 2010. This sum reflects 12.86 hours of work at a rate of \$200 per hour and 1.1 hours at a rate of \$80 per hour. The complainant also seeks \$6.10 in costs. As noted above, the respondents did not file an objection.

II. There Are No Special Circumstances That Would Make an Award of Attorney's Fees Unjust

Both federal practice and Commission practice provide that attorney's fees should be granted to complainants who prevail in civil rights cases unless special circumstances would make such an award unjust. *See Newman v. Piggie Park Enterprises, Inc.*, 390 U.S. 400 (1968); *Christianburg Garment Co. v. EEOC*, 434 U.S. 412 (1978); *Banyaniye v. Mi Sueno, Inc. and Jesus M. Titin*, Commission File No. 07 PPD 310 (Decision on Motion for Attorney's Fees 2009) ([Banyaniye](#)) and *Morro v. State of Rhode Island/Department of Corrections*, Decision on Request For Attorney's Fees, Commission File No. 81 EAG 104 (1982) ([Morro](#)). In this case, there are no special circumstances that would make an award of attorney's fees unjust.

III. The Appropriate Amount of Attorneys' Fees

To calculate the lodestar amount for attorney's fees, the number of hours reasonably expended by counsel is multiplied by a reasonable hourly rate. *City of Burlington v. Dague*, 505 U.S. 557, 559,

112 S. Ct. 2638, 2640 (1992). There is "a strong presumption that the lodestar is sufficient ...". Perdue v. Kenny A. ex rel. Winn, 559 U.S. _____, 130 S. Ct. 1662, 1669 (2010) (Perdue).

Factors to be considered in determining the lodestar amount may include the novelty and difficulty of the questions involved, the skill needed to perform the legal services, preclusion of other employment by the attorney, the customary fee in the community, time limitations imposed, the monetary and other results obtained, the experience, reputation and ability of the lawyer, the undesirability of the case, the nature and length of the attorney's professional relationship to the client and awards in similar cases. Perdue; Pennsylvania v. Delaware Valley Citizens' Council for Clean Air, 478 U.S. 546, 564 – 565, 106 S. Ct. 3088 (1986). The Commission will examine the above-cited factors in determining the lodestar.¹ Banyaniye.

A. The number of hours reasonably expended by complainant's counsel

The Commission first examines the number of hours claimed by the complainant. The complainant's attorney asks that he receive a fee for 13.96 hours of work for work done up to April 6, 2010. The Commission finds that the hours submitted were reasonable and will award fees for those hours.

B. The reasonableness of the requested hourly fee

The complainant's attorney seeks a rate of \$80 per hour for travel and \$200 per hour for other legal work. As discussed above, the Commission will look at a number of factors in evaluating the reasonableness of the requested hourly rate.

In this case, a number of the factors discussed above are not significant. The case was not undesirable, the professional relationship of the attorney and the complainant was not unusual and the case would have only a minimal impact on the attorney's ability to take other cases. The time limitations imposed were not unusual.

The Commission ordered the respondents to pay the complainant \$9,984 in back pay and \$1,200 in compensatory damages for pain and suffering plus 12% statutory interest. The Commission also ordered that the respondents undergo training on the provisions of state and federal law prohibiting discrimination in employment. Thus the complainant received a significant remedy and the hourly rate should not be decreased because of this factor.

Disability discrimination in termination is not a novel issue in employment discrimination law, but the issues relating to proving disability discrimination are complicated and the law in this area has changed over the years. A reasonable level of skill was needed to present the case. The

¹ There may be cases in which the lodestar should be increased, but the Motion does not request an increase in the lodestar and the Commission finds that the circumstances of this case do not warrant such an increase. See Perdue which held that: "a party seeking fees has the burden of identifying a factor that the lodestar does not adequately take into account and proving with specificity that an enhanced fee is justified". 130 S. Ct. at 1669.

complainant's attorney was admitted to practice in Rhode Island in 1990. He has concentrated his practice on labor and employment issues, and in particular employment discrimination cases, since 1992. He presented the case in an effective way.

The Commission has awarded hourly fees to attorneys ranging from \$35 per hour to \$290 per hour. In a 1999 case, O'Rourke v. City of Providence, 77 F.Supp.2d 258 (D. R.I. 1999), *aff'd in part and rev'd in part on other grounds*, 235 F.3d 713 (1st Cir. 2001), the District Court granted one of the attorneys in the case attorney's fees at a rate of \$200 per hour. In 2003, attorneys who submitted a supplemental motion for attorney's fees in a Title IX discrimination case were awarded fees at rates ranging from \$175 per hour to \$305 per hour. Cohen v. Brown University, 2003 WL 21511123 (D. N.H. 2003). In Shoucair v. Brown University, 2004 WL 2075159 (R.I. Super. 2004), an employment discrimination case, the Court found \$275 per hour to be a reasonable hourly rate to award an attorney with extensive experience in labor and employment litigation. Complainant's counsel was awarded an attorney's fee of \$200 per hour in the employment-related case of Parker v. Overhead Door Co. of Providence, 2007 R.I. Super. LEXIS 110 (R.I. Superior Court 2007).

Taking all of the above factors into account, the Commission finds that \$80 per hour is a reasonable rate for the complainant's attorney's travel time and \$200 per hour is a reasonable rate for the other time expended by the complainant's attorney. Therefore, the Commission will award the lodestar amount of \$2,660.00. The Commission also awards costs of \$6.10 for the cost to obtain a copy of the transcript.

ORDER

- I. Violations of R.I.G.L. Section 28-5-7 having been found, in addition to the relief ordered in the Decision and Order dated February 24, 2010, the Commission hereby orders the respondents:
 1. Within thirty days of the date of this Order, to pay complainant's attorney's fees to Attorney Robert Savage in the amount of \$2,660.00 for work performed up to April 6, 2010;
 2. Within thirty days of the date of this Order, to pay costs of \$6.10 to Attorney Robert Savage;
 3. To pay to Attorney Robert Savage 12% annual interest on the amount in Paragraphs I(1 and 2) above, starting on the date of this Order and ending when the amount is paid in full;
 4. To submit to the Commission a copy of a cancelled check indicating compliance with Paragraphs I(1 -3) above within forty-five days of the date of this Order.

Entered this [30th] day of [August], 2010

_____/S/_____

Rochelle Bates Lee
Hearing Officer

I have read the record and concur in the judgment.

_____/S/_____

Camille Vella-Wilkinson
Commissioner

_____/S/_____

Alberto Aponte Cardona
Commissioner